

income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Authority: Pub. L. 92-425 as amended (10 U.S.C. 1448 note); Sec. 638, Pub. L. 104-201, 110 Stat. 2581)

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AI91

Active Military Service Certified Under Section 401 of Public Law 95-202

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning persons who are included as having served on active duty. This action is necessary because the Secretary of the Air Force has determined that the service of two groups known as "U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945" and "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945" constitutes active military service in the Armed Forces of the United States. The intended effect of this amendment is to reflect eligibility of members of these groups for VA benefits.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Section 401 of Pub. L. 95-202 states that under

certain circumstances the service of certain groups that had rendered service to the Armed Forces of the United States in the capacity of civilian employment or contractual service shall be considered active duty for the purposes of all laws administered by VA. In order for members of such a group to be eligible for VA benefits, the Secretary of Defense, or his or her designee, must determine that the service of the group constituted active military service and issue discharges to members of the group.

In the *Federal Register* of July 7, 1997 (62 FR 36263-64), the Secretary of the Air Force published a notice that she had determined that for VA purposes the service of two groups constituted active military service: the U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945, and U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945. Under these circumstances, members of these groups are eligible for VA benefits. The effective date of the determination by the Secretary of the Air Force was June 2, 1997. Accordingly, this document amends 38 CFR 3.7(x) to recognize that the service of these groups constitutes active military service for the purposes of laws administered by VA.

Additionally, we have amended the heading and introductory text of 38 CFR 3.7 to make it easier for interested individuals to clearly identify the topic of the regulations. These are not substantive changes.

This document reflects determinations totally within the purview of the Secretary of the Air Force and also reflects statutory determinations. In addition, this document contains other changes which are nonsubstantive. Under these circumstances, the changes made by this document are exempt from the notice-and-comment and from the delayed-effective-date provisions of 5 U.S.C. 553.

Since a notice of proposed rulemaking is unnecessary, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). Nonetheless, the Secretary certifies that this final rule will not have a significant economic

impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. This final rule will not affect any small entity.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 23, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.7, the section heading and introductory text are revised and new paragraphs (x)(29) and (x)(30) are added to read as follows:

§ 3.7 Individuals and groups considered to have performed active military, naval, or air service.

The following individuals and groups are considered to have performed active military, naval, or air service:

* * * * *

(x) * * *
(29) U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945.

(30) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945.

(Authority: Sec. 401, Pub. L. 95-202, 91 Stat. 1449)

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